IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.949 OF 2003

Bharatinath Namdeo Gavand .. Applicant

Versus

Lakhsman Mali and Ors. .. Respondents

Ms.Gauri Godse for applicant

Mr.P.S.Dani for respondent Nos. 1 to 11

Mr.P.S.Hingorani, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9th January 2006.

ORAL JUDGEMENT:-

. Rule. Respondents waive service. By consent heard forthwith.

2. Petitioner is the original complainant. He is aggrieved and dis-satisfied by the order of the learned Adhoc Additional Sessions Judge, Raigad, Alibag dated 15th February 2003 in Criminal Revision Application No.138 of 2001.

3. The above Criminal Revision Application was preferred by the original accused (respondent Nos. 1 to 11 before me) challenging an order passed by the Chief Judicial Magistrate, Raigad, Alibaug in Summary Case No.1040 of 2001 dated 5th December 2001.

4. Chief Judicial Magistrate directed the process to be issued against accused for offences punishable under section 7 of Protection of Civil Rights Act, 1955 (hereinafter referred to as "Civil Rights Act). Process was issued upon the complaint of petitioner before me.

5. Petitioner in the complaint alleged that he and his family members are residing at Mouje Phopheri post Narangi Taluka Alibaug, Dist.Raigad. The name of complainant's father is Namdeo Bali Gavand. He expired on 28th July 1999. The deceased father during his life time was a tenant in respect of agricultural land situate at Mouje Chinchwadi, S.Nos. 13/2 (23/2). Accused Nos. 1 to 12 belong to Mouje Mandavkhod, Phopheri. The accused are Chief Panchas and representatives of villagers. These persons purported to sell the above mentioned agricultural lands. Therefore, the complainant filed Civil Suit No.13 of 2000 and has obtained an injunction against the villagers.

6. It is alleged that adjacent to the agricultural land referred to above is the land/property of the accused. However, they are laying claims to S.Nos.13(2) belonging to the complainant. Since, accused are claiming the

lands belonging to the complainant, they had boycotted the complainant as also his father and family members since 1985-86. The accused do not maintain any relations with the complainant regarding any matters pertaining to the village. It is further alleged that whenever the villagers celebrate Navratri, Satyanarayan Pooja, Village Jatra and other festivals or programmes, the accused do not permit the complainant and his family members to participate in the same. They are not collecting any donations from the complainant. They are not on talking terms with the complainant. Accused do not maintain any relations or enter into any transactions with them. These state of affairs have continued after the death of complainants' father in 1999. It is lastly alleged that whenever anybody tries to maintain relations with the complainant, accused are penalising that person. On account of boycott, it is not possible for the complainant as also his sisters to solemnise

their marriage. The accused do not permit the complainant to participate in any Marriage function organised in the village. They are treated like untouchables. Complainant approached Supdt. of Police Alibaug on 7th April 2001 but no cognisance was taken of his complaint.

7. It is in these circumstances and making above allegations that the complaint was filed on 23rd July 2001, alleging commission of offences punishable under section 7 of Civil Rights Act.

8. Upon complaint being lodged, the learned Chief Judicial Magistrate recorded verification statement. The petitioner Bhartinath Gavand examined himself and reiterated the contents of the complaint. He pointed out that the boycott is still continuing.

9. The Chief Judicial Magistrate called for

a report under section 202 Cr.P.C. Learned Judge perused the report, complaint, statement of complainant and after hearing complainant's Advocate directed that process be issued summoning the accused for offences punishable under section 7 of Civil Rights Act.

10. The respondents accused aggrieved by the above order of Chief Judicial Magistrate preferred Criminal Revision Application No.138 of 2001 on 28th December 2001, challenging issuance of process and summoning them. They contended that the complaint read as a whole does not disclose commission of any offences under Civil Rights Act. It is pointed out that the original complainant is not a person belonging to Scheduled Caste. He is, therefore, not "untouchable". It is only when a person is "untouchable" that the protection of Civil Rights Act could be claimed. Original complainant is from Agri community which falls under O.B.C.

Therefore, the Act is inapplicable.

11. In other words, argument was that Civil Rights Act was amended in 1976. Earlier, the Act was known as "Untouchability (Offences) Act, 1955". In such circumstances, only when a person belongs to the category of "untouchables" that he is entitled to invoke provisions of Civil Rights Act. Petitioner complainant being not such a person, the complaint itself was not maintainable. Consequently, it does not disclose any offence and the accused should not have been summoned.

12. This Revision Application was placed before the Additional Sessions Judge and the learned Judge has observed thus:-

> "6. After carefully going through the section 7 of the Act it is amply clear that mischief aimed at by this section is

about observing untouchability. There is nothing on record to show that either the accused or the complainant comes from backward community which are considered to be untouchables and that the accused observed untouchability in this respect. The case of social boycott does come within the clutches of section 7 of the Act. Under section 7 of the Act the aggrieved party must be such a person to whom the rights have accrued by reason of abolition of untouchability under Article 17 of the Indian Constitution. It is not the case of the complainant that his case falls within those qualifications which are enunciated in Section 7(a) of the Act. The case of Social boycott is not covered under Section 7 of the Act. I am fortified in this behalf by a ruling Devrajiah Vs. Padmanna A.I.R. 1961 Madras 35(39)."

Observing as above, the learned Additional Sessions Judge proceeded to allow the Revision application and quashed and set aside the order of Chief Judicial Magistrate, Raigad issuing process and summoning respondents Nos. 1 to 11 before me. Aggrieved by this judgement and order of the Revisional Court the petitioner - complainant invokes jurisdiction of this Court under Article 227 of Constitution of India read with Section 482 of Cr.P.C.

13. Ms.Godse, learned Advocate appearing for petitioner submits that the very premise upon which the Revisional Court proceeded is erroneous and legally untenable. The Act is entitled "Protection of Civil Rights Act, 1955. Although, the term "Civil Rights" as defined in the Act means any right accruing to a person by reason of abolition of untouchability by Articles 17 of the Constitution, yet, the Act itself does not

restrict its operation to persons who are "untouchables". She submits that the Act is very wide in its application. It cannot be restricted in its applicability to only members of Scheduled Castes and Scheduled Tribes. She submits that the Act contains provisions where punishment is prescribed for enforcing religious and social disabilities. She invites my attention to the explanation below section 4 of the Civil Rights Act. She also submits that punishment is prescribed for refusing to admit a person to hotels and for refusing to sell goods or render services. She submits that in this case, the offence alleged is punishable under section 7(1)(c). She submits that the explanation below Section 7 would categorically show that the Parliament/Legislature does not intend that Act should apply only to untouchables.

14. She submits that the Act is to give effect to the Constitutional mandate of

discrimination on the ground of sex, religion and place of birth. She submits that upon abolition of untouchability no discrimination or disability can be made or enforced. She submits that if the statement of objects and reasons is perused, it is clear that when the original Act was enacted, the term "Untouchability" was not defined. Thus, the protection is for civil rights of each and every person and there is no distinction made on the ground of his religion or caste. The Act is secular in its application. The Act cannot be said to be restricted in its application to only such persons, who have been historically and socially treated as untouchables. She submits that if the interpretation as placed by the learned Additional Sessions Judge is upheld, then, the very purpose of enacting a law to protect civil rights of an individual is frustrated and defeated. She submits that the narrow interpretation placed by the Additional Sessions Judge, therefore, should not be

accepted. She submits that the caste system and the disability on account of the same is covered under the Act along with further social evils. She submits that the term "Practice Untouchability in any form whatsoever" would make the Legislative intent clear. She submits that the Act of social boycotting any person is also covered by the Act and she invites my attention to explanation I appearing in section 7. She submits that the Section 7(1)(c) will have to be read with this explanation and harmoniously with other provisions. So read, it is crystal clear that the interpretation placed by the Additional Sessions Judge is wholly erroneous.

15. Alternatively, she submits that once the Constitutional mandate under Articles 15 and 16 has been applied to OBC, then the complaint was maintained. The word "Class" appearing after the words "Socially Backward" in these Articles would show that the Constitutional Guarantee of

equality extends to all backward classes. The same is not restricted to members of Scheduled Castes and Tribes. She submits that by placing a restricted meaning on the term and interfering with the order issuing process, the learned Additional Sessions Judge has committed grave error apparent on the face of record and his finding, is, therefore, capable of being interfered with by this Court. She submits that the learned Additional Sessions Judge has exceeded his jurisdiction while interfering with the order issuing process in revisional jurisdiction. She submits that it is not as if the accused will not have any remedy merely because process is issued. They would have full opportunity to place such materials on record as are permissible in law and substantiate their pleas on merits. For all these reasons, the judgement and order of the learned Additional Sessions Judge be quashed and set aside. In support of her contentions Ms.Godse relies upon

the following decisions:-

i) A.I.R. 1961 Madras 35 (V 48 C 11) (Rangachari Vs. The General Manager, Southern Railway, Madras & Anr.)

ii) A.I.R. 1961 Madras 42 (V 48 C 12) (Chelladorai & Ors. Varagunarama Pandiya Chhinnathambiar (died) and Ors.)

iii) (2002) 8 S.C.C. 106 (N.Adithayan Vs. Travancore Devaswom Board & Ors)

(iv) (2002) 8 S.C.C. 125 (Bachittar Singh and Anr. Vs. State of Punjab)

(v) 1980 CRI.L.J. 518 (Kanhu Ram and Ors. Vs. Durga Ram)

(vi) 1980 CRI.L.J. 521 (Food Inspector of Cannanore Municipality Vs.

C.Mohan)

(vii) 1994 S.C.C. (Cri) 1762 (State of Karnataka Vs. Appa Balu Ingale & Ors).

16. Mr.Dani, learned Counsel appearing for respondent Nos. 1 to 11 original accused, on the other hand, submits that the order passed by the learned Additional Sessions Judge does not require any interference in the jurisdiction conferred on this Court by Article 227 of the Constitution of India so also section 482 of Cr.P.C. He submits that the view taken by the learned Additional Sessions Judge is based upon the materials that were placed before him and it is also consistent with the provisions of the Act. He submits that such a view is not liable to be interfered with by this Court even if it is of the opinion that a different interpretation of provision in question is possible. Thus, the

view taken by the Additional Sessions Judge, if possible in law is not liable for interference under discretionary, equitable and extra ordinary jurisdiction under Article 227 of the Constitution of India. He submits that another view being possible means the benefit must go to the accused. In other words, if this Court entertained any doubt and is of the view that another interpretation of the provision in question is possible, then, the settled principle is that the benefit must be given to the accused and not to the prosecution. Hence, the petition deserves to be dismissed.

17. Mr.Dani, further submits that the provision in the instant case is a penal provision. He submits that while interpreting a penal provision, there is no place for any implied meaning. In other words, nothing can be read by implication in a Penal Statute or provision. If the act of a person is an offence,

then alone he can be tried and punished. If the offence is spelt out clearly, then alone, a person can be charged with commission of the same. If the offence itself is not spelt out, then, by an interpretative process, this Court cannot read into a penal provision anything for creating an offence. He submits that if Ms.Godse's interpretation is to be accepted, then, this Court will be reading into the provisions something which the Parliament itself has omitted to provide and read.

18. Lastly, Mr.Dani highlights the historical aspect of the practice of untouchability. He submits that Hindu religion has castism. The caste system was socially prevalent. This caste system brought with itself several practices which had ill-effects on the society. In other words, it brought about exploitation and harassment of those who were backward and down trodden. The evils of caste system were

destroying the social fabric. It was considered as a crime against humanity. Hence, "untouchability" which was one of the evils of caste system was abolished by the framers of Constitution. The term "untouchability" contemplates treating a group of or class of persons as out-caste that is, untouchables and not worth keeping contact with or communicating at all. It is to protect the rights of such persons who were treated as untouchables, historically and socially, that the Act has been enacted by the Parliament. Even if the title of the Act is changed, does not mean that the basic object has undergone any change. A person has to be untouchable and treated as such and only then, he is entitled to the protection of the Act. Once, it is understood that the Act has been enacted to curb and put an end to all disabilities and practices arising out of untouchability, then, the person seeking protection of the same has to be from such a

category.

19. The petitioner is not a untouchable. In other words, he does not belong to the Scheduled Caste or Scheduled Tribe. He does not belong to a group or caste which is at the receiving end. He has in his complaint maintained complete silence about his community or caste. In such circumstances, the Act itself was inapplicable and the complaint was not maintainable. Therefore, no question of the same disclosing any offence arises, in the facts of this case. Hence, no process could have been issued and the learned Additional Sessions Judge was right in the conclusion that he has reached.

20. For all these reasons Mr.Dani submits that the petition be dismissed. He relies upon the following decisions to support his submissions:-

i) 1991 Cri.L.J. 2954 (Phulsingh Vs. State of Madhya Pradesh)

ii) A.I.R. 1958 Mysore 84 (V 45 C 22) (Devarajiah Vs. B.Padmanna)

iii) 1979 Bom.C.R. 309 (Kumari Mangala Parashram & Ors. Vs. The State of Maharashtra)

iv) 1994(2) Bom.C.R. 54 (Sugdeo Ramchandra Tayade Vs. State of Maharashtra)

21. For properly appreciating rival contentions, it would be appropriate firstly to refer to some of the allegations in the complaint and thereafter the relevant statutory provisions.

22. Admittedly, the complainant fails to disclose his community or caste. In that sense,

the complaint may not be at the instance of a scheduled caste or scheduled tribe but certainly it projects grievance of a person socially outcaste by the accused. It is well settled that a complaint must be read as a whole for the purpose of ascertaining whether it discloses commission of any criminal offence. The petitioner complainant alleges that on account of a civil suit being filed, to protect the rights in an agricultural land, the accused have boycotted the petitioner and his family. They are not entering into any transaction nor having any contact or communication with the petitioner and his family members. If anybody tries to establish contact or maintain relations, the act of such a person attracts penalty. On account of such acts, the petitioner and his family are unable to participate in social functions or events. They are unable to perform marriages.

23. The complaint projects grievance of

treating petitioner and his family members as outcasts and boycotting them completely. The question is whether such an act is punishable under the Protection of Civil Rights Act.

24. The arguments before me have proceeded on the basis that the acts of accused may amount to an offence otherwise punishable and in that sense, the complaint does disclose an offence, But, the complainant is not the one who can allege commission of the same. In other words, only such persons who are treated and recognised as untouchables can invoke the protection of Civil Rights Act. This is the relevant issue before me.

25. Whether a person not belonging to a scheduled caste or scheduled tribe is an untouchable and whether he can lodge a complaint alleging commission of offence under the Civil Rights Act, is a question that needs to be

answered.

26. The protection of Civil Rights Act prior to its amendment in 1976 was known as Untouchability (Offences) Act, 1955. It is an act to prescribe punishment for preaching and practice of untouchability, for enforcement of disability arising therefrom and for matters connected therewith.

27. The Act defines the term "Civil Rights" in Section 2(a) to mean any right accruing to a person by reason of abolition of untouchability by Article 17 of the Constitution. The term "Scheduled Caste" has been defined in Section 2(d)(b). Section 3 prescribes punishment for enforcing religious disabilities. Whoever, on the ground of untouchability prevents any person from entering any place of public worship, which is open to other persons professing the same religion or any section thereof as such

person or from worshipping or offering prayers or perform any religious service to any place of public worship or doing other acts set out in Section 3(b) is said to commit an act which is punishable with imprisonment and also with fine.

28. Section 4, prescribes punishment for enforcing social disabilities. That also opens with same words "whoever on the ground of untouchability". The explanation below Section 4, in my view, only explains that the section applies to any disability including any discrimination on the ground of untouchability. That is only to explain that this section applies when the discrimination and disabilities are alleged by the concerned person.

29. There is no explanation to Section 5 but the opening words are the same as reproduced above. Similar is the case with Section 6. Section 5 deals with admission to hospitals etc.

whereas section 6 covers refusal to sell goods or render services. Then, comes section 7 which reads thus:-

> "7. Punishment for other offences arising out of "untouchability":- (1) Whoever -
>
> (a) Prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under Article 17 of the Constitution; or
>
> (b) molests, injures, annoys, obstructs or causes or attempts to cause, obstruction to any person in the exercise of any such right or molests, injures, annoys, or boycotts any person by reason of his having exercised

any such right; or

(c) by words, either spoken or written, or by signs or by visible representations or otherwise, incites or encourages any person or class of persons or the public generally to practice "untouchability" in any form whatsoever; or

(d) Insults or attempts to insult, on the ground of "untouchability", a member of a Scheduled Castes;

Shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred

rupees.

Explanation I: A person shall be deemed to boycott another person who:-

(a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to do any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or

(b) abstains from such social, professional or business

relations as he would ordinarily maintain with such other person.

Explanation II: For the purposes of clause (c), a person shall be deemed to incite or encourage the practice of "untouchability" -

(a) if he, directly or indirectly preaches "untouchability" or its practice in any form; or

(b) if he justifies, whether on historical, philosophical or religious grounds or on the ground of any tradition of the caste system or on any other ground, the practice of "untouchability" in any form.

1A: Whoever commits any offence

against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of he abolition of "untouchability" under article 17 of the Constitution, shall, where the offence is punishable with imprisonment for a term exceeding two years, be punishable with imprisonment for a term which shall not be less than two years and also with fine.

(2) Whoever ---

(i) denies to any person belonging to his community or any section thereof any right or privilege to which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person on the ground that such person has refused to practice "untouchability" or that such person has done any act in furtherance of the objects of this Act, shall be punishable with imprisonment for a term of not less than one month and not more than six months, and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees.

7A. Unlawful compulsory labour when to be deemed to be a practice of untouchability:- (1) Whoever compels any person, on the ground of "untouchability" to do any scavenging or sweeping or to remove any carcass or to flay any animal

> or to remove the umbilical cord to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of "untouchability";
>
> (2) Whoever is deemed under sub-section (1) to have enforced a disability arising out of "untouchability" shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees.

Explanation:- For the purposes of this section "compulsion" includes a threat of social or economic boycott.

30. A bare reading of these sections makes it clear that offences arising out of untouchability

are brought within the purview of the same. It is an offence to prevent any person from exercising any right accruing by reason of abolition of untouchability. Molesting, injuring, annoying, obstructing or similar such acts in exercise of such right or by words spoken or written or by signs or visible representation inciting or encouraging any person or class of persons or the public in general to practice untouchability in any form whatsoever is also an offence. Even an attempt to cause obstruction to any person is an offence. The above acts if committed after the exercise of the Right accruing by reasons of abolition of untouchability are brought within the purview of the penal provision. Insulting or attempting to insult on the ground of untouchability of any member of the scheduled caste is a punishable act. Thus, all acts, deeds, which would prevent exercise of any right accruing on account of abolition of untouchability is a punishable

offence.

31. Explanation to section 7 would have to be, therefore, read in this context so also in the backdrop of the substantive provisions. Once all acts, deeds which would obstruct or otherwise prevent a person from exercising any right accruing on account of abolition of untouchability are covered by the provision, then, the explanation merely clarifies and explains that even socially boycotting them or abstaining in any form while keeping social or professional or business relations which would ordinarily be required to be undertaken must necessarily be brought within the purview of the penal provision preventing or obstructing exercising rights accruing on account of abolition of untouchability. That is how the explanations are worded and must be read. It is not a substantive section in itself, but one clarifies as to what is the scope of substantive

section.

32. Sub-section (1A) and (2) would not enlarge or create new offences, but in my view explains the concept, the concept viz., the offences arising out of untouchability. By whatever acts and deeds a person is treated as untouchable have to be put an end to and in any event curbed and prohibited. The section is widely worded so that untouchability which was practiced in any form is brought within the purview of the penal provision. The higher caste was ingenious in practicing untouchability. The denial of basic human rights to those who are Downtrodden and backward is a known phenomenon. Judicial notice can be taken of the Parliamentary intention to put an end to practice of untouchability. All acts, as would make it impossible for persons belonging to lower strata to live and survive as human being are included and forbidden in law. It is not a law for

protection of civil rights of anybody or everybody irrespective of caste, creed or community. That is not the area or field of the said legislation.

33. Sub-section 1(a) of Section 7, if seen in the backdrop of the above, would make it further clear that the offence committed against the person or property of any individual as a reprisal or revenge for his having exercised any right accruing to him by reason of abolition of untouchability shall be punishable with imprisonment for the term specified therein. Subsection 2 of section 7 also must be construed accordingly. The provisions of the Act including section 12 would thus indicate that the practice of untouchability being abolished by the Constitution, the abolition has to be carried out in letter and spirit. The abolition must be complete and therefore, certain measures had to be initiated. In other words, for the

Constitutional Goal to be achieved appropriate statutory measures had to be provided for. The decision to enact the law for making untouchability an offence, therefore, was taken.

34. When it was found that the act as enacted in 1955 was not a complete Code and had certain deficiencies, the amendment was thought of in 1976. The enactment underwent a change including in its name. Certain clarifications and explanations came to be introduced.

35. However, the underlying object appears to extend complete protection to the civil rights of persons who had to suffer on account of the practice of untouchability.

36. It is not possible to accede to the submissions of petitioner, original complainant, that the Act must, therefore, be applied to all persons whose civil rights are adversely

affected. The Act having been enacted in the background of the practice of untouchability prevalent in India and to prohibit it, the same must receive an interpretation so as to sub-serve the said object. The provisions cannot be extended to those who are not entitled to the protection thereof.

37. In this behalf, the decision of the Supreme Court in the case of State of Karnataka Vs.Appa Ingale, reported in 1994 S.C.C. (Criminal) 1762 is clear. The Indian Scheduled Castes are treated as untouchables and termed as "Dalits". In paras 11 and 12 of this judgement after referring to the scope of Article 17 and its object the Hon’ble Supreme Court has observed that the caste system among the Hindus has been structured on graded heirarchy as enumerated therein. The Supreme Court after tracing the entire historical events leading to the Constitutional provisions and protection of

Dalits observed as under:-

> "23. Thus the disabilities to which Dalits are subjected, have been outlawed and denial thereof offends the right to equality enshrined in Article 14 of the Constitution etc. These provisions also furnish evidence of sociology that Dalits have been denied access to all the public means open to the general public and of public amenities. The practice of untouchability is the root cause for social segregation, denial of opportunities for educational, economic and cultural pursuits; Dalits are subjected to severe discrimination, disabilities, liabilities, prohibitions, restrictions or conditions etc. The scheme in Part III, namely, Fundamental Rights is to remove disabilities to which the Dalits are subjected to and to

provide positive rights in their favour and Part IV directive principles fasten duties on the State to render socio-economic and political justice and to protect them from all forms of exploitation and injustice by operation of Article 38 and Article 46 of the Constitution. In other words the Constitution charges the State to improve the quality of their life, social, economic and cultural pursuits as part of meaningful right to life guaranteed under Article 21 of the Constitution.

24. The above provisions seek to serve threefold purpose (i) outlawed the disabilities to which Dalits are subjected to; (ii) they are made an offence under the Act; and (iii) provided rights enforceable as civil rights. Untouchability is the root cause

and consequently any religious, social, customary or moral grounds to enforce untouchability no longer subsists nor is valid after January 26, 1950. Enforcement of any disability is a crime against human rights and the Constitution entails the wrongdoer with punishment. All customs, usages, practices, directly or indirectly recognising or encouraging the practice of untouchability in any form is void, being opposed to public policy. Even a contract, covenant or any private transaction tending to recognise, encourage or effectuate untouchability in any form is, therefore, void ab initio.

25. The right to reservation for appointment to an office or a post under the State, has been guaranteed under Articles 16 and 14 and right to admission into an educational institution is

guaranteed under Articles 15 and 29(2). The right to residence and settlement in any part of the Country has been guaranteed under Article 19(1)(e) and right to an avocation or a profession has been guaranteed by Article 19(1)(g). Article 335 gives them the right to an appointment to an office or post under the State. These positive rights created in favour of the Dalits, when violated or denied, they are not only enforceable in a court of law but also the infractors are liable to punishment under the Act. Take for instance the practice of bonded labour is not only an offence but its abolition is also a right enforceable under Abolition of Bonded Labour Regulation Act. Similarly, the institution of Jogins and Devadasis by virtue of its prohibition under Article 23 is no longer a valid custom. Any

person tending to encourage it is liable to not only damages but also criminal prosecution. Similarly, denial of admission into educational institutions on the grounds of caste is an offence and also is enforceable through appropriate proceedings. To impede the exercise of the right to residing in any part of the country and settlement, on the grounds of untouchability is not only an offence but the conduct amounts to an offence under the Act. Under the welfare schemes when the houses constructed for the Dalits, Tribes and backward classes, if they are so allotted as to perpetuate untouchability, the officer not only commits misconduct in the discharge of public duty but also by his conduct becomes liable for prosecution. Any contract or sale of the allotted lands or buildings to others is void being opposed

to public policy and the purchaser acquires no right, title or interest therein. The Dalits or the State are entitled to restitution of such houses or lands allotted to them.

28. The above mandate and goal of the Constitution would be a reality if only the law is enforced strictly. The march of law should match to protect the life and there should be factual improvement in the quality of life of the Dalits; equality of opportunity and of status, justice - social, economic and political to relieve them of their travails, tortures and tribulations endured for centuries due to historical reasons. The handicaps, disabilities and sufferings, restrictions or conditions to which they are subjected need eradication and redressal under rule of law by bridging

> the gaps by pragmatic interpretations. The Act not only prescribes penal offences but also accords civil and social rights as part of constitutional scheme. It requires to be enforced, interpreted and the evidence evaluated on the touchstone of the constitutional creed and ethos and any negation would abrogate and abnegate the Constitutional policy."

38. These observations although made by only K.Ramaswamy, J. are helpful in considering the limited controversy before me. It is not necessary to take note of other rights of Dalits or provisions in that behalf. In the context of the Civil Rights Act, these observations are a sure guide. These observations would also find support in the subsequent decision of Supreme Court in the case of N.Adithayan Vs. Travancore Devaswom Board and Ors. reported in (2002) 8

S.C.C. 106. Ms.Godse would like me to rely upon para 16 of this judgement but that would not be appropriate. The judgement and para 16 will have to be read along with the observations in the earlier paras. In para 15 the Supreme Court observes thus:-

> "15. As observed by this Court in Kailash Sonkar Vs. Maya Devi in view of the categorical revelations made in the Gita and the dream of the Father of the Nation Mahatma Gandhi that all distinctions based on caste and creed must be abolished and man must be known and recognised by his actions, irrespective of the caste to which he may on account of his birth belong, a positive step has been taken to achieve this in the Constitution and, in our view, the message conveyed thereby got engrafted in the form of Articles 14 to

> 17 and 21 of the Constitution of India, and paved the way for the enactment of the Protection of Civil Rights Act, 1955".

Hence, the conclusion in para 16 that founding fathers of the Constitution desired liberation from the blind and ritualistic adherence to mere traditional superstitious beliefs which do not stand to reason or rational basis has found expression in the form of Article 17, in my view, should be read in the context of an appointment of Pujari for a temple and the Supreme Court has observed that it could be regardless of caste.

39. It is, therefore, not possible to accept the contentions of Ms.Godse that the protection of the Civil Rights Act extends to "Other Backward Classes". Assuming that the complainant is a OBC, the Civil Rights Act cannot, prima facie, be invoked by him straightaway. It is not

necessary to enter into any larger controversy save and except noticing the distinction in the constitution between Backward Class of citizens and Scheduled Castes and Tribes (See Art.15(4) and 16(4)). The word/expression "Backward Classes" refers to Classes other than the members of Scheduled Castes and Tribes. That members of the Scheduled Castes and Tribes are referred to as the "Dalits" by the Supreme Court is amply clear. In the above circumstances, the other decisions relied upon by Ms.Godse would not be of any assistance in construing the relevant provisions.

40. The judgement of the Himachal Pradesh High Court in the case of Kanhu Ram and Ors. Vs. Durga Ram and more particularly para 7 thereof must be seen in proper context. There the provisions of section 15 of the earlier Act are referred to. The factual position in which the observations are made in para 7 is also relevant.

It is in the backdrop of denial of complete protection to a Harijan that the complaint was filed.

41. In view of the above, there is substance in the contention of Mr.Dani that protection under the Civil Rights Act cannot be sought by a person who is not a untouchable and recognised as such. The reliance upon the decision in the case (Devarajiah Vs. B.Padmanna) reported in A.I.R. 1958 Mysore 84 (V 45 C 22) is appropriate.

42. In my view, the learned Additional Sessions Judge was right, therefore, in interfering with the order of the J.M.F.C. The challenge to the order of the Additional Sessions Judge is not well founded for the reasons recorded above. In the result, Rule is discharged.

(S.C.Dharmadhikari, J)